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TICKETS.

THE use of tickets by railroad companies has in the last thirty years given great and increasing legal significance to that species of document. Yet, in spite of the many cases in which questions arising from the use of tickets have been discussed, no attempt has been made to determine the exact legal status of a ticket; and much confusion has resulted from a failure to distinguish instruments properly called tickets from mere receipts or vouchers. Before discussing at large the points at issue it will be necessary to propose an accurate definition of a ticket.

A ticket is a formal document, valid and interpretable by some well-known business custom, requiring the party issuing it to do something, or to give something, not money, to the bearer at or within a certain time. It secures a future right to the bearer; thus differing from a receipt or voucher, which merely proves a right already secured.

The tickets in general use fall into four classes. By far the most important class consists of tickets which entitle the bearer to the service of the maker as carrier. Of this class two sorts of tickets are used: railroad tickets and postage-stamps. A class of tickets very similar to these consists of tickets admitting the bearer to some place of amusement, there to be entertained; the typical ticket of this sort is a theatre ticket. A third class consists of tickets entitling the bearer to a chance in a lottery. Finally, there is a class of tickets, of slight pecuniary value, entitling the bearer to food or drink: dinner tickets, soup tickets, soda tickets, and the like.

These tickets differ, of course, in detail; but they all agree in essentials, and, principally, they are all contracts. This has always been recognized in the case of lottery tickets[1] and theatre tickets.[2] In the case of railroad tickets, however, there has been some difference of opinion.

The whole difficulty arose from two important cases, decided in New York thirty years ago by the Court of Appeals, in which

[1] Homer *v.* Whitman, 15 Mass. 132; McLaughlin *v.* Waite, 5 Wend. 404; Shankland *v.* Corporation of Washington, 5 Pet. 390.

[2] McCrae *v.* Marsh, 12 Gray, 211; Burton *v.* Scherpf, 1 All. 133.

the nature of a railroad ticket was carefully debated. The first of these cases was *Hibbard* v. *R. R. Co.*[1] Hibbard took passage on the cars of the defendant company, having a ticket which, on demand, he showed to the conductor. The conductor afterwards asked again to see the ticket, but Hibbard refused to show it. He, however, assured the conductor that he had a ticket; so did several other passengers who had seen the ticket. It did not appear that the conductor himself did not remember that Hibbard had already showed his ticket; but Hibbard persisted in his refusal, and the conductor ejected him from the train.

The question before the court, therefore, was merely whether the rule of the company, requiring passengers to show their tickets whenever requested, was a reasonable one. But the court considered the nature of the ticket, and the general opinion seemed to be expressed by Denio, C. J., who said that a ticket was "a receipt for the payment of fare." Brown, J., went further. "The ticket," he said, "is the property of the railroad company, and is a part of the means by which it conducts its business. It is delivered to the passenger to be held by him, temporarily, for a special purpose, and who, to that extent, acquires a special property in it. When the journey is ended, or about to end, it is to be redelivered to the conductor. It serves a threefold purpose: it is evidence in the passenger's hands that he has paid his fare and has a right within the cars; it insures the payment of the passage money by all who take seats, and when it is redelivered to the company it becomes a voucher in its hands, against the office or agent who issued it, in the adjustment of its accounts."

This is a singularly inaccurate description of a railroad ticket; which, whatever else it may be, is certainly the property of the holder, and not of the railroad company. But it is an almost exact description of a cancelled ticket which is left in the possession of the passenger to serve the purpose of a conductor's check. That, certainly, is not a contract, but a receipt; and that was in fact the character of the instrument in question in this case. The opinion of Brown, J., is a striking example of judicial intuition; for the distinction noticed above is hardly yet recognized in the law.

Soon after this decision the same court had again to consider the same question in a case which at once became the leading one on the subject, — *Quimby* v. *Vanderbilt.*[2] Vanderbilt advertised to

[1] 15 N. Y. 455. [2] 17 N. Y. 306.

transport passengers to California from New York over two lines of steamship, with a connecting transit across the Isthmus. The road across the Isthmus was in fact operated by an independent company. This company gave Vanderbilt its tickets, which he sold, as he had occasion, in connection with tickets of the steamship company; and for each ticket sold he paid the Transit Company a certain sum of money. It was clear that he did not act as agent for that company. The plaintiff in this case bought a ticket, relying on Vanderbilt's advertisement and representations at the time he sold the ticket; and when he reached the Isthmus no means of transportation were furnished for him. He sued Vanderbilt for failing to transport him. The defendant relied on certain expressions thrown out in earlier cases,[1] that a ticket was *evidence* of a contract, and could not, therefore, be varied. He, therefore, claimed that, as the ticket purported to be issued by the Transit Company, it was impossible to show by parol evidence that Vanderbilt actually made the contract.

Now, it is perfectly plain that in this case there was a contract of carriage, apart from the ticket. The plaintiff made a bargain with the agent of Vanderbilt — not a ticket-agent merely, but one authorized to make such contracts — for a journey of which the transit across the Isthmus formed a part. It was evident that the court should hold Vanderbilt liable, and so they did. They adopted the theory that Chief Justice Denio had put forward in *Hibbard* v. *R. R. Co.*, that a ticket is a receipt for the payment of fare. In both cases, it will be noticed, the theory is more plausible than in the ordinary case. Denio's argument in support of the theory seems, it must be confessed, rather inconclusive.

"Their character as mere tokens is shown by the fact that the defendant received them in large numbers of the Transit Company, not as an agent of that company for the purpose of making bargains in its behalf with others, but to furnish them to persons with whom he expected to deal on his own account. . . . To him [the company] sold tickets in the nature of permits for passage over their route, in such quantities as he chose to purchase. It is proved that neither he nor Allen were agents for the Transit Company. When he dealt with a traveler, therefore, he bargained on his own account, and not on behalf of the Transit Company." The object of this whole argument is to prove that the ticket was not

[1] See, for instance, the language of Ellsworth, J., in Hood *v.* R. R. Co., 22 Conn. 1.

evidence of the special contract between the defendant and the plaintiff, and in this respect the opinion is convincing; but in the constructive part of the argument the reasoning is not perfectly clear.

The name of Denio was enough to give this theory an importance and a currency beyond its merits. It is hardly held, now, as a working theory in any jurisdiction; but phrases are often thrown out, in passing, by the judges which show that the theory at some time approved itself to their minds. Thus Agnew, J., said, in *Dietrich* v. *R. R. Co.*,[1] "Tickets are evidence of the payment of the fare, and of the right of the holder, or party named, as here, to be carried according to its terms." Lord Chelmsford, in *Henderson* v. *Stevenson*, said[2] "The moment the money for the passage is paid and accepted, their obligation to carry and convey arises. It does not require the exchange of a ticket for the passage-money, the ticket being only a voucher that the money has been paid." This is the most logical statement of the doctrine under consideration that has ever been made; yet the noble and learned lord was so little satisfied with it that he went on in his next words to outline an alternative theory.

This theory is objectionable for many reasons. Payment of the money to the ticket-agent does not, unless the payer secures a ticket, give the right to ride.[3] Nor has a ticket-holder in very many cases paid his fare; for instance, where a free pass is issued on some consideration, which is not the payment of fare, or where the purchaser of the ticket has sold or given it to the passenger. But the principal objection to the theory is this: it is impossible to pay for anything before one gets it. "Payment in advance," so called, is really a payment which is the consideration of a promise to perform; otherwise the payment would be without consideration, and, not being meant as a gift, might be recovered. The payment of fare on the train is payment made concurrently with performance on the other side. There is no contract on either side. So in case of the payment of the price of admission to a theatre; it is made at the time of admission, and is not to secure a contract. If the actress is ill, and cannot appear, the one who has paid the price of admission is entitled to have it refunded, because his considera-

[1] 71 Pa. St. 432, 435. [2] L. R., 2 H. L. Sc. 470, 477.

[3] Weaver *v.* R. R. Co., 3 N. Y. S. Ct. 270; and see Frederick *v.* R. R. Co., 37 Mich. 342.

tion has failed. One, however, who had bought a ticket days beforehand, who had gone to great expense on account of the performance in the way of carriage-hire, who had suffered great disappointment through the postponement, might doubtless recover against the maker of the ticket in an action of contract, in which his damages might well exceed the price he had paid for his ticket.[1] In the same way one who has bought a ticket before taking the train would, from the time he purchased the ticket until he presented it in the train, have a claim against the company. It is this claim for which the purchaser paid money; and this claim is the ticket.

This objection was avoided by the courts, which passed gradually and insensibly from Chief Justice Denio's theory to the true one. Thus, Wheeler, J., said in *Jerome* v. *Smith*,[2] "When the plaintiff bought the ticket he bought what was symbolic evidence of a right that whoever should have it might ride, and what any other person could use as well as he. The title to it, and right to a passage upon it, would pass by mere delivery, and whoever should have it could pay the fare of a passenger with it by delivering it in payment." The court abandoned the notion that the fare was paid when the ticket was purchased; but no intimation was given as to the nature of the ticket before it was presented in the train. It is clear, however, that the right it gives the bearer to ride is an irrevocable, that is, a contractual right. If this were not so the company might at any time abandon the use of tickets, or increase the price of them, and refuse to receive the tickets previously issued; yet this plainly could not be done by the custom of railroads.

It became inevitable, therefore, that a contract should be recognized as existing before the ticket was presented in payment; and the courts have gradually reached the true theory. In the leading case in Ohio,[3] Sutliffe, J., said, "Upon payment of his passage money, and obtaining a general receipt, or passenger ticket, from an office, for his conveyance to a designated point upon the carrier's line, the passenger in either case is entitled to present his receipt or ticket for his passage, at any reasonable time, on any outgoing regular means of public conveyance of the carrier, and demand

[1] McCrae *v.* Marsh, *supra*.

[2] 48 Vt. 230; see also Van Buskirk *v.* Roberts, 31 N. Y. 661.

[3] R.R. Co. *v.* Bartram, 11 Oh. St. 457.

the execution of the contract on his part." In its statement of the nature of a ticket this case is still defective; but it recognizes the fact that there is a binding contract on the part of the carrier.

To much the same effect is the opinion of Earl, C., in *Rawson* v. *R.R. Co.*:[1] "It is a mere token or voucher adopted for convenience to show that the passenger has paid his fare from one place to another. The contract between these parties was made when the plaintiff bought her ticket, and the rights and duties of the parties were then determined."

The true theory seems now to be established in England. The leading case was a Scotch appeal in the House of Lords, *Henderson* v. *Stevenson*.[2] The question there was as to the effect of a sentence limiting the carrier's liability, printed on the back of the ticket, and did not strictly involve the nature of a ticket; but the Lords discussed that question at length. Lord Cairns said, "Upon that which was given to the passenger, and which he read, and of which he was aware, there was a contract complete and self-contained without reference to anything *dehors*. Those who were satisfied to hand to the passenger such a contract complete upon the face of it, and to receive his money upon its being so handed to him, must be taken, as it seems to me, to have made that contract, and that contract only, with the passenger." It must be admitted that the other lords did not go so far, and were inclined to look on a ticket as a receipt or voucher; but the view of Lord Cairns seems to be the law of England. In *Burke* v. *Ry. Co.*,[3] a few years later, where much the same question was before the court, Lord Coleridge said, "The contract, as I understand it, can only be this little book, and the whole of this little book. This is the contract, and these are the terms on which the defendants agreed to take the plaintiff to Paris and back."

The American authorities are not so satisfactory. Until lately the courts have been under the influence of Chief Justice Denio's theory. But the decided tendency is to hold that a ticket is a contract; and it seems certain that the American courts will, before many years pass, come into general agreement with the English courts. All the later decisions look that way. Thus, in the case of *Sleeper* v. *R.R. Co.*,[4] Trunkey, J., said, speaking of the purchase of a ticket, "It was a mere purchase of the obligation of a common

[1] 48 N. Y. 212, 217.
[2] L.R., 2 H. L. Sc. 470.
[3] 5 C. P. D. 1.
[4] 100 Pa. St. 259.

carrier, to carry the holder according to its terms. The defendant issued the obligation, received the consideration, and became liable for performance at the date of issue. As transferee, the plaintiff claimed performance. This is the contract which is the basis of the cause of action." The Supreme Court of Arkansas, by Cockrill, C.J., lately said, "The carrier selling the ticket was the agent of the appellant for that purpose, and the coupon attached for the appellant's road was a contract by appellant as binding as if issued by its agent here."[1] The Court of Virginia made an ingenious compromise with the old theory:[2] "A passenger's ticket is both a receipt and a contract. It is the acknowledgment of the receipt of the passenger's fare, and the obligation to carry him for the purposes and upon the terms specified."

It seems to be settled, therefore, that railroad tickets, like other kinds of ticket, are now recognized as contracts. This is the most obvious way in which to distinguish a ticket from a mere receipt. As the distinction is an important one it may be well to treat it more at large, and in connection with various sorts of ticket.

A lottery ticket, properly so called, is a contract, conferring on the bearer the right to a chance in the drawing when that occurs. Consequently, after the drawing occurs, if the number of the ticket draws a blank the bearer has no further rights; and if it draws a prize the ticket becomes evidence of the bearer's right to get the money. In the latter case, however, the right to receive the money does not result from the purchase of the ticket, but from the drawing. After the prize is drawn the amount of it is held in trust, as a specific fund, for the holder of the lucky ticket, who can enforce his right by a common money count. The right conferred by the ticket is only to have a chance in the drawing; and after the drawing the ticket is no longer a ticket, properly so called, but a mere receipt.

Another example of what in form was a lottery ticket, but in fact a mere receipt, is found in two English cases.[3] The English statute forbidding lotteries had put an end to legal lotteries, and, of course, to all the customs of the lottery business. But certain persons devised a means of evading the statute. A number of men met and deposited each a certain sum of money; and cards (mis-

[1] Ry. Co. *v.* Dean, 43 Ark. 529; and see 47 Ind. 79; 7 East. Rep. 838.

[2] Lacy, J., in R.R. Co. *v.* Ashby, 79 Va. 130, 133.

[3] Jones *v.* Carter, 8 Q.B. 134; Allport *v.* Nutt, 1 C. B. 974.

called *tickets*) were prepared, each bearing the name of a horse entered for the Derby. A card was then drawn for each man, and the whole deposit went to the men who drew the cards bearing the names of the winners of the Derby. As a matter of fact the Derby had not taken place when the cards were drawn; but that did not alter the legal nature of the transaction. The card was not like a lottery ticket, for the drawing had taken place; it was a mere voucher to show who was entitled to the money. The one who drew the card would have been entitled to receive his prize just as much if the cards had been destroyed as soon as the drawing was completed. It was rightly held, therefore, that one of these cards could not be transferred so as to bring the transferee into privity with the company.

A theatre ticket is a contract securing the right of admission to a place of amusement. But the coupon, which is detached and retained by the bearer of the ticket, is a mere voucher, showing a right that has already accrued to the holder. At the moment the bearer presents his ticket for admission his right to the seat designated by the coupon accrues; and the coupon is, therefore, a voucher to prove a present right, rather than a contract to secure a future one.

The most important distinctions, however, are those connected with railroad tickets. A railroad ticket, properly so called, is a contract obliging the railroad company to receive the bearer as a passenger. But when once the bearer is so received the obligation is satisfied, and all further rights of the passenger are secured by the custom of carriers, not by the ticket. The conductor should, therefore, cancel the ticket as soon as it is presented to him; and from that moment the ticket becomes (like the coupon on a theatre ticket) a mere voucher, held by the passenger for the convenience, chiefly, of the conductor, to show that the passenger is rightfully on the cars. It is precisely similar in effect to a conductor's check, or the receipt given to a passenger who pays his money in the cars. Such an instrument, as one will easily see, is not a contract, but a mere receipt.[1] That a ticket once cancelled ceases to be a ticket, and becomes a mere receipt, is recognized by the courts. In *Auerbach* v. *R.R. Co.*,[2] Earl, J., said, "When the plaintiff entered the train at Rochester on the afternoon of the 26th of September and presented his ticket and it was accepted and punched,

[1] Breen *v.* R. R. Co., 50 Tex. 43. [2] 89 N. Y. 281.

it was then used within the meaning of the contract. It could then have been taken up. So far as the plaintiff was concerned it had then performed its office. It was thereafter left with him not for his convenience, but under regulations of the defendant for its convenience, that it might know that his passage had been paid for."

These few examples will perhaps show clearly the distinction between a ticket and a receipt or voucher, and will make it evident that a ticket is a contract. It yet remains to consider what is the nature of the contract.

It will be noticed that a ticket was defined to be an obligation to give something, not money, to the bearer. An obligation to give money to the bearer is a bill, note, or bank-check. It appears, therefore, that there is some analogy between tickets and promissory notes; an analogy that has frequently been noticed in the cases. In view of this analogy the theory naturally suggests itself that a ticket is not a consensual, but a formal, contract, and is to be governed by the principles of the law merchant, and not of the common law.

That there are business customs as clearly and firmly established with regard to tickets as the custom of merchants was, with regard to bills of exchange, in Lord Holt's time, is patent to every one. Nor is there any greater reason why the common law should recognize the custom with regard to bills than that it should recognize the custom with regard to tickets. Even Lord Holt could not prevent the law of Lombard street from moulding the law of England; and after Lord Holt failed to keep promissory notes out of the realm of law no judge dared frown on bills of lading, or bank-checks, or letters of credit. And, if the custom of merchants with regard to bills of lading is recognized by the courts, there seems to be no good reason for refusing recognition to the custom of merchants with regard to tickets.

For the custom is a mercantile one. Tickets are issued in the course of recognized trades. The railroad, the theatre, the innkeeper, are as fairly in trade, as fairly merchants, as the shipmaster, the banker, or the broker. A mercantile contract is not necessarily for the payment of money. A bill of lading is for the delivery of goods; yet it is admitted that the custom governs. Government-bond scrip is for the delivery of a bond, but it is a recognized mercantile contract. Nor is it to be admitted that no new custom will be engrafted into the law. As Cockburn, C. J., said,

in *Goodwin v. Robarts*,[1] "Usage, adopted by the courts, having been the origin of the whole of the so-called law merchant as to negotiable securities, what is there to prevent our acting upon the principle acted upon by our predecessors, and followed in the precedents they have left to us? Why is it to be said that a new usage which has sprung up under altered circumstances, is to be less admissible than the usages of past times? Why is the door to be now shut to the admission and adoption of usage in a matter altogether of cognate character, as though the law had been finally stereotyped and settled by some positive and peremptory enactment?"

It may be admitted that at one time, before the custom established itself as it now is, what is now a ticket was a mere receipt, or voucher. It is quite likely that a railroad ticket was originally a mere token to prove to the person in charge of the conveyance that a verbal contract of carriage had been made. In such case, of course, the ticket would not confer a right, but would merely prove a right; and equally of course it could not be transferred except by means of an assignment, good at common law, of the contract of carriage. In the same way a theatre ticket, probably, merely proved that the holder of it had "booked" his place after a primitive system like that now in use in England. Then there was no custom established giving validity to the ticket, and the ticket was not a contract. But, as soon as it became customary to issue these tickets in advance of the right they secured, and to make them good in the hands of the bearer, the custom thus created gave them a character and a power which they did not previously possess. The same process, doubtless, gave validity to a note, which, before the custom was firmly established, was simply evidence of a debt.

As a matter of fact it is evident that a ticket derives all its validity from the custom. The necessary elements of a consensual contract are wanting. The ticket-agent is an agent to sell tickets, not to make contracts for his employer.[2] There is no communication between the contracting parties; the terms are fixed by the custom, and the obligee may be one who has bought the ticket, not from the party issuing it, but from a prior holder. Such a contract as this is, in its essence, a formal, not a consensual, contract.

[1] L. R. 10 Ex. 337, 352.

[2] Duling *v.* R. R. Co., 7 East. Rep. 838.

This fact is frequently recognized in the cases. Thus, in *Cheney* v. *R. R. Co.*,[1] Dewey, J., said, "It is true that the tickets themselves do not describe the passage to be one by the same train. . . . They are silent as to the mode. It therefore was a contract to carry in the usual manner in which passengers are carried who have tickets of that kind." Thompson, J., said, in *Evans* v. *Ry. Co.*,[2] "These tickets, as is well known, are not *personal* contracts with the particular person who first buys them. . . . They are bought and sold from hand to hand, like shares of stock, negotiable bonds, and other kind of scrip. They are, as is well known, sometimes sold in large quantities by the agents of the railroad companies themselves, to brokers, who in turn sell them at a profit to the travelling public. This being so, unless their terms are perfectly clear and unambiguous, they are liable to deceive and work a fraud upon innocent travellers." In the case of a lottery ticket Allen, Senator (dissenting, but upon a different point), said, in *McLaughlin* v. *Waite*,[3] "A lottery ticket, as a transferable article, is the same as a bank-note, and was intended to be so considered by the makers of them, and has been so considered by the public."

The ticket is transferable as a contract, by the custom. Tickets are often made to run to the bearer; but even without such words the ticket is generally transferable, unless it is in terms limited to the original holder. In this respect the custom even goes beyond that with respect to promissory notes. They are not negotiable unless words of negotiability appear; tickets are transferable unless words are used to limit their transferability.

This transfer is not the mere assignment of a contract right; it creates a new right against the party issuing it, and extinguishes the previous right of the transferrer. As was said by Story, J., in *Shankland* v. *Corporation of Washington*,[4] with regard to a lottery ticket, "As owner and possessor of the whole ticket, if he had made a sale of the whole . . . he would have substituted another as possessor and transferer, to whom the original promise of the corporation would then have attached." The exact point came up to be decided in a late case in Pennsylvania, *Sleeper* v. *R. R.*

[1] 11 Met. 121; see also Smith, J., in Gordon *v.* R. R. Co., 52 N. H. 596; Paige, J., in R. R. Co. *v.* Page, 22 Barb. 130; Wheeler, J., in Jerome *v.* Smith, 48 Vt. 230.
[2] 11 Mo. App. 463, 469.
[3] 5 Wend. 404, 411; and see Snyder *v.* Wolfley, 8 S. & R. 328, 331.
[4] 5 Pet. 390, 393.

Co.[1] The plaintiff in that case purchased a ticket over the railroad of the defendant company from a "ticket-scalper" in New York. A Pennsylvania statute forbids holders of railroad tickets to sell them. The defendant refused to carry the plaintiff, and he brought an action of contract in Pennsylvania. It was objected, that he was attempting to enforce the contract of the scalper, and that the scalper had no right to sell. The court, however, gave judgment for the plaintiff. In the course of his opinion Trunkey, J., said, "It [the contract] is purposely made so as to entitle the *bona fide* holder to performance, and for breach to an action in his own name. . . . It is true, as claimed by the defendant [in error, *i. e.*, Sleeper], this action is to enforce not the contract between the ticket-scalper and the plaintiff in error, but between the defendant in error and the plaintiff in error. . . . As the plaintiff has a valid title to the ticket the contract between the defendant and himself is valid."

A transaction of this nature is not the assignment of a right; in that case the assignee claims through the assignor, even where (by statute) he may sue in his own name. But it is a true transfer, like that of a promissory note by endorsement; all the right that was formerly in the transferrer has left him and gone to the transferee, who claims in his own right.

The question whether a ticket is negotiable raises a much more difficult question; but, on the whole, there seems no reason for making a distinction in this respect between tickets and promissory notes. The custom certainly is to take tickets without any inquiry as to the title of the prior holder; and such a custom is favorable to the purposes of trade. It is certain that railroads taking tickets from passengers must be protected; and there is no reason for making any distinction between the maker of a ticket and the holder of it. It may be remembered that in the early days of the late war, when small change was scarce, horse-car tickets passed readily from hand to hand as currency; and postage-stamps served the same purpose. It is evident that at that time those tickets were regarded as negotiable. It is probably the general understanding now that tickets are negotiable.

Such is the weight of authority. With regard to lottery tickets it is well established that they are negotiable. In most of the cases they are compared to bank-notes payable to bearer. The leading

[1] 100 Pa. St. 259.

case in this country, so often referred to, *Shankland* v. *Corporation of Washington*,[1] was a case where the owner of a ticket issued a sub-ticket, entitling the holder to half of the prize. The owner of the whole ticket collected the money and disappeared with it, and the owner of the half-ticket sued the maker of the ticket. It was held that he could not recover. In the course of his opinion Story, J., said, "If this had been the case of a bank-note payable to bearer, there is no pretence to say that a person claiming a moiety by contract with the bearer, could have maintained a suit against the bank upon such contract for the moiety; when the note itself had been surrendered up to the bank by the bearer. In what respect does such a case differ from the present? Suppose, after this sub-ticket was issued, Gillespie had sold and delivered the whole ticket to another person, having no notice; would not the latter have been entitled to recover the whole prize from the corporation? If so, would the corporation still be liable to pay the half prize to the plaintiff?"

That was a case where equities were discharged by purchase for value. But as a ticket is a contract with the bearer, if it is negotiable, purchase for value must be a source of title, giving to the bearer a title which the previous owner may not have had. The point came up in a case in Pennsylvania, and it was distinctly so held. It was a case where the owner of a lottery ticket who had lost it sued for the prize drawn against the number of the ticket. Gibson, J., said in that case,[2] "The fruits of the ticket were payable to the bearer; and the defendants could not resist payment of it in the hands of a *bona-fide* holder for valuable consideration, even though it should originally have been stolen."

The authorities with regard to railroad tickets are more conflicting. *Sleeper* v. *R. R. Co.*, cited just above, goes a long way toward holding a ticket negotiable. On the other hand, a late Ohio case has held a ticket not to be negotiable.[3] This case, however, was distinctly decided on the ground that a ticket is not a contract, but a voucher, and can be regarded as authority only where that theory is held. It is not perhaps too much to say that wherever the true theory, that a ticket is a formal contract, is recognized, the ticket will be held negotiable.

[1] 5 Pet. 390.

[2] Snyder *v.* Wolfley, 8 S. & R. 328, 331; and see McLaughlin *v.* Waite, 5 Wend. 404.

[3] Frank *v.* Ingalls, 41 Oh. St. 560.

The theories that I have advanced in this essay will, I think, be confirmed by examining the rules regulating the issue and use of tickets which have been established by authority. These rules correspond in all respects with those established in the case of notes payable to bearer; and new questions would doubtless be settled in accordance with the law of negotiable paper. It is necessary to pass over these points as rapidly as possible.

A ticket, then, must be in regular form. The name of the maker should be on it, and the necessary terms of the contract. In some cases a peculiar color, or other distinguishing mark, is used to designate the terms of the ticket. A ticket must always, it seems, be printed; some of the terms may be written, but they must be written in a printed form.

Like other formal contracts a ticket takes effect only from the time of its delivery; before that the ticket is waste paper. The delivery is generally made on behalf of the company by an agent, called a ticket-agent. The powers of a ticket-agent are exceedingly limited. He is authorized only to sell a ticket for cash. He cannot sell on credit,[1] nor can he make representations as to the general affairs of the company. He is simply an agent for the sale of tickets,[2] not to make contracts;[3] and his representations bind the company only when they are representations as to the validity of the tickets he sells. Thus, if he sells a punched ticket, representing it to be a good one, the company is liable on the ticket;[4] though if he gives a ticket for B, when the passenger calls for and pays for a ticket to A, the passenger can ride only to B on the ticket.[5] In fact, the powers of a ticket-agent are the ordinary powers of an agent for sale.

A ticket to be good against the company requires some consideration to have been given for it, otherwise it may be repudiated by the company. A free pass, for instance, may be revoked at any moment until it is actually used.[6] But the consideration need not have been a valuable one. Any consideration that would support a promissory note would support a ticket. Thus, a theatre ticket sent to a dramatic critic is binding. A man travelling on a free pass given him by the railroad company, under an agreement

[1] Frank *v.* Ingalls, 41 Oh. St. 560.
[2] Pennington *v.* R.R. Co. 62 Md. 95.
[3] Duling *v.* R.R. Co., 7 East. Rep. 838.
[4] Murdock *v.* R.R. Co., 137 Mass. 293; and see to the same effect, Hufford *v.* R.R. Co., 31 N. W. Rep. (Mich.) 544; Young *v.* R. R. Co, 7 Atl. Rep. (Pa.) 741.
[5] Frederick *v.* R.R. Co., 37 Mich. 342.
[6] Turner *v.* R.R. Co., 70 N.C. 1.

that if he would come and show a coupling he had invented the company would pay his expenses, was held not to be travelling as a "free or gratuitous passenger,"[1] and doubtless the pass could not be revoked. The same court has held that a drover, travelling with his stock on a free pass, or "drover's ticket," was a passenger for hire.[2]

As in the case of any formal contract it is essential to the validity of the obligation that the consideration, whatever it was, shall not have failed. A ticket, therefore, purchased with a counterfeit bank-note, is not binding on the company, although the purchaser did not know the note to be a bad one.[3]

When the ticket has become operative in the hands of a holder he may pass his right by mere delivery,[4] as he may in case of a note payable to bearer. For this reason it is held that the price of lottery tickets may be recovered in an action for goods sold and delivered;[5] as is true also of promissory notes.

A railroad ticket is generally presentable immediately, and if any time is set it is the time beyond which the ticket will not be good. But it may be presentable at a fixed time, as is usually the case with excursion tickets. Other sorts of ticket are generally to be used at a fixed time.

A ticket, like a note, must be presented to the maker when the time comes for the performance of the contract. There seems to be an exception to this rule in case of a lottery ticket. If a lottery ticket secures the right only to the drawing of the lottery the ticket is not then surrendered. That is natural enough, since if anything comes to the holder it comes after the drawing; and the ticket is a necessary piece of evidence to enable the holder to secure his prize, if he is fortunate. All other tickets must be surrendered at the moment of performance. They then cease to be tickets. If such a ticket is returned to the prior holder he holds it, as has been seen, simply as a receipt.[6] It is much like a cancelled bank-check.

Since the performance of any formal contract is conditional on the surrender of the instrument it is clear that the loss of a ticket before it is surrendered must fall upon the holder.[7] As Wheeler,

[1] Railway Co. *v.* Stevens, 95 U.S. 655. [2] R.R. Co. *v.* Lockwood, 17 Wall. 357.

[3] R.R. Co. *v.* Chastine, 54 Miss. 503.

[4] Snyder *v.* Wolfley, 8 S. & R. 328; Jerome *v.* Smith, 48 Vt. 230.

[5] Yohe *v.* Robertson, 2 Whart. 155. [6] Auerbach *v.* R.R. Co., 89 N. Y. 281.

[7] Standish *v.* Steamship Co., 111 Mass. 512; Crawford *v.* R.R. Co., 26 Oh. St. 580; Shelton *v.* Ry. Co., 29 Oh. St. 214.

J., said forcibly in *Jerome* v. *Smith*:[1] "The mere fact of having had it, without having it to deliver in payment on reasonable request, would not entitle any one to the passage, any more than having a sufficient amount of money to pay the fare with, without paying it, would." The Supreme Court of Illinois, in the case of *Pullman Palace Car Co.* v. *Reed*,[2] attempted to limit this rule, but the limitation would hardly be approved elsewhere.

When the ticket has been lost, or destroyed, recovery may be had as in the case of a lost bill; that is, by a bill in equity offering indemnity. In those jurisdictions where recovery may be had at law on a lost note, upon giving indemnity to the defendant, the same thing may be done in case of a lost ticket. Such was the case of *Snyder* v. *Wolfley*[3] in Pennsylvania. In that case Gibson, J., said, "With respect to a negotiable security which passes by mere delivery, and which is not destroyed but *lost*, the remedy is always in chancery, on terms of giving security against the defendant's eventual liability. . . . By the express terms of the ticket, whatever prize should be drawn opposite to its number, was to be payable only to the bearer; which by necessary implication, would require the production of the ticket itself; or as an equivalent, in case of its loss, security against damage from payment being made without having it delivered up."

The fact that the ticket must be delivered to the maker at the time of performance has an important effect upon the right secured by a railroad ticket. As performance is concurrent with surrender, performance must be regarded as a unit. As soon, therefore, as the passenger is received upon the train, and his carriage toward the point of destination begun, the contract secured by the ticket is performed; or, at least, the only right of the ticket-holder is to be carried through safely to his destination. Accordingly, a ticket is used as soon as the train starts on its journey; its surrender may then be called for by the conductor. This point appears clearly in a case already referred to, *Auerbach* v. *R.R. Co.*[4] In that case a ticket from Buffalo to New York was to expire on the 26th of September. On the evening of that day the bearer took the train for New York, and his ticket was called for and punched. He was allowed to travel until after midnight, but early in the morning of the 27th he

[1] 48 Vt. 230. [2] 75 Ill. 125. [3] 8 S. & R. 328.
[4] 89 N. Y. 281; Evans *v.* Ry. Co., 11 Mo. App. 463 to the same effect.

was ejected from the train. He sued for damages, and the Court of Appeals held that he was entitled to recover.

For the same reason the ticket-holder has no right, upon a single ticket, to travel a part of the way on one train, and the rest of the way on another train. This is dividing the performance into two parts; a thing that may not be done in case of a formal contract. If the passenger leaves the train before he reaches his point of destination he has no right, unless he has first obtained permission from the company, to ride on to the point of destination upon the same ticket.[1]

There is no reason, however, for requiring the passenger to take the train at the station named as the beginning of the journey. So long as the passenger enters the train between the points named on the ticket, and rides no further than the point of destination of the ticket, he has a right to present his contract for performance. Thus, a passenger having a ticket for New York from Buffalo may enter the train at Rochester,[2] or may leave it at Albany.

The bearer of a ticket, however, cannot entirely change its terms, even if he puts no additional burden upon the company. A ticket from Portland to Boston will not, as a matter of right, entitle the bearer to a passage from Boston to Portland.[3]

A ticket may be issued by one who is not in the position of maker; thus, one railroad may issue tickets over the line of another road. It has generally been said that the railroad issuing the tickets acts as agent of the road over whose line the ticket is issued;[4] but this theory is difficult to sustain in all cases, for a company often issues tickets where there is no agency in fact. Thus, in *Hudson* v. *Ry. Co.*,[5] the Kansas-Pacific Company, not being authorized to do so, sold tickets over the line of the Denver and Rio Grande Company. The latter company refused to allow a passage over its road on the tickets. The court held the Kansas-Pacific Company justified in issuing such tickets, and held it liable in an action upon the ticket. This sort of ticket is much like a bill of exchange; the drawer being liable if the drawee refuses to accept the instrument. It seems that this is the true nature of the

[1] R.R. Co. *v.* Bartram, 11 Oh. St. 457; Cheney *v.* R.R. Co., 11 Met. 121; Vankirk *v.* R.R. Co., 76 Pa. St. 66.

[2] Auerbach *v.* R.R. Co., 89 N. Y. 281. [3] Keeley *v.* R.R. Co., 67 Me. 163.

[4] Brooke *v.* Ry. Co., 15 Mich. 332; Ry. Co. *v.* Dean, 43 Ark. 529.

[5] 3 McCrary 249; and see Cloud *v.* Ry. Co., 14 Mo. App. 136, 143, 145.

ticket in such case, and that the rules regulating the use of bills of exchange would apply. Action would lie against the company, therefore, only upon the refusal of the second company to honor the ticket, followed by seasonable notice to the first company; unless, indeed, as is often the case,[1] the company issuing the ticket may be regarded as the agent of the other to accept the ticket.

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[1] *See* Young *v.* R.R. Co., 7 Atl. Rep. (Pa.) 741.